

EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC., (CAUSE NO. 2:21-CV-463-JRG
)
Plaintiff, ()
vs. ()
SAMSUNG ELECTRONICS CO., LTD., ()
et al., () MARSHALL, TEXAS
() APRIL 18, 2023
Defendants. () 8:30 A.M.

VOLUME 3

TRIAL ON THE MERITS

BEFORE THE HONORABLE RODNEY GILSTRAP
UNITED STATES CHIEF DISTRICT JUDGE
and a jury

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1 customer?

2 A. Yes.

3 Q. Did you do all of this work yourself -- actually, you
4 mentioned a moment ago that you had some help from a team.
5 Could you tell us a little bit more about the team?

6 A. Sure. I've got a team that consists generally on -- on
7 big matters like this of six key people with a number of staff
8 that work on those six sub-teams and that all have specialized
9 experience in particular areas of patent valuation and
10 economic analysis.

11 Q. And can you give us an example of why you call upon your
12 colleagues for some of the advanced work involving software?

13 A. Sure. One example is we'll talk about a regression
14 analysis later of the massive amount of sales data, and
15 there's an economist that works with me, that that's what he
16 does for a living.

17 And so I worked with him or -- and he worked with me to
18 analyze the sales data that Samsung had produced in this
19 matter, because we had to determine what was sold, how much it
20 was sold for, and the relationship between the sales prices
21 and the speed, which we'll talk about later.

22 Q. Okay. Before we get into the details of your analysis,
23 is there a United States law that you followed for your work
24 in this case?

25 A. Yes, patent damages statute.

1 Q. We have that on the screen. Could you explain for us how
2 that influences your analysis?

3 A. The important aspect of this is that Samsung should pay
4 in no event less than a reasonable royalty for the use made of
5 the invention. That's what I'm determining, the value of that
6 use, how much they used it, and what they made off of that
7 use.

8 Q. Is there a framework that damages experts such as
9 yourself typically use to evaluate royalties?

10 A. Yes. It's called a hypothetical negotiation.

11 Q. What are the rules that apply to this hypothetical
12 negotiation that we do in -- in litigation?

13 A. So there's three important rules. The first one there is
14 that the parties have to reach an agreement. They can't walk
15 away like you can do in the real world.

16 And, second, you have both parties have access to all --
17 each other's information, even confidential top secret
18 information that you don't get in the real world negotiating.

19 And then the third important factor is that in this
20 hypothetical negotiation, Samsung knows that Netlist's patents
21 are valid and infringed.

22 Q. When does the hypothetical negotiation take place for
23 this case?

24 A. It's at the date of first infringement. And for the HBM
25 products, that's July of 2020 after the JDLA ended. And for

1 DDR4 and DDR5, it was March and May of 2021.

2 Q. And just to level-set on that, you were here in Court,
3 Mr. Kennedy, when Judge Gilstrap explained to the jury that it
4 had been determined that Samsung no longer had a license after
5 July of 2020. Is that where that date is coming from?

6 A. Yes, that's correct.

7 Q. Now, is there a set of factors that courts have laid out
8 to aid experts like yourself in performing this analysis?

9 A. Yes. They're called the *Georgia-Pacific* factors, named
10 after a well-known patent case years ago, and it outlines 15
11 factors that experts need to consider to determine damages.

12 Q. What are the first three factors that you focused on for
13 your work?

14 A. So 1 and 2 relate to any licensing history that the
15 parties might have that might be relevant to the hypothetical
16 negotiation.

17 And factor No. 5 is something where we have to consider
18 the commercial relationship between the licensor and licensee
19 at the time of this hypothetical negotiation.

20 Q. Mr. Kennedy, when you reviewed all of the facts and
21 documents in the case, what did you find to be the most
22 significant facts regarding the parties' licensing history and
23 their relationship?

24 A. Well, Netlist has never licensed its patents outside of a
25 strategic agreement, and that's really important because in

1 the hypothetical negotiation there is no strategic agreement.
2 Samsung needs a license to the patents, and they are not
3 giving anything in return for that except royalties.

4 Q. And could you go on and describe what other additional
5 significant facts you found?

6 A. So the JDLA included a cross license, and that means that
7 Netlist got a license to all of Samsung's patents, and they
8 also got this highly valuable supply agreement.

9 Q. And -- I'm sorry. Go on, Mr. Kennedy.

10 A. Sure. And one other factor that I considered was the
11 fact that Samsung entered into a license in a very similar
12 situation as this situation, and it involved memory patents
13 and they agreed to pay up to \$1.1 billion plus give a cross
14 license to Rambus to their patents.

15 Q. So at a high level, what was the impact of these on how
16 you're thinking about the parties approaching a hypothetical
17 negotiation?

18 A. So these are all important factors that place upward
19 adjustment on the royalty rate, significant upward adjustment.

20 Q. So let's turn to each of them in turn. You mentioned
21 that Netlist never previously has licensed or never in the
22 real world has licensed its patents outside of a strategic
23 relationship. What was significant to you in particular about
24 the JDLA relationship?

25 A. So this is some deposition testimony from Samsung's

1 president of memory, and he was told to look into any
2 feasibility of a technological collaboration with Netlist.
3 And that's significant because Samsung is the largest memory
4 company in the world, and they're coming to Netlist for help
5 to this technology. So that would definitely have a
6 significant upward adjustment to the royalty rate at the
7 hypothetical negotiation. Samsung really needs Netlist
8 technology.

9 Q. Now, did you see evidence that Samsung was aware that
10 Netlist had important patents?

11 A. Yes, I did.

12 Q. Now, I know the jury has seen these a number of times.
13 Are these some of the examples on the screen here of the
14 evidence that Samsung was aware of the Netlist patents and
15 pending applications?

16 A. Yes.

17 Q. Now, you mentioned that the JDLA included, I think you
18 used the phrase, a highly valuable supply obligation. Is that
19 right?

20 A. Yes.

21 Q. And were you able to review the records of the parties to
22 understand the quantities of supply that were exchanged when
23 the JDLA was first put in place?

24 A. Yes, I was.

25 Q. And what is the particular example that we're looking at

1 THE COURT: All right. Let me see Mr. Cordell,
2 Mr. McKeon, and Ms. Smith, together with Mr. Sheasby,
3 Mr. Burgess, and Ms. Truelove in chambers.

4 Otherwise, we stand in recess until tomorrow morning.

5 (The proceedings were concluded at 5:30 p.m.)

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